

IN THE HIGH COURT OF JUDICATURE AT PATNA

Against the judgment and order dated 22.03.1999 passed in S.Tr. No. 374/94/40/94 by the 1st Additional District and Sessions Judge, Nawadah.

Criminal Appeal (SJ) No. 77 of 1999

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1. Awadh Paswan.

2. Anirudh Paswan. Both sons of Prasadi Paswan.

3. Prasadi Paswan, Son of late Bandho Paswan.

All resident of Village and P.O.-Andharwari, P.S.-Rajauli, District-Nawadah.

.... Appellant/s

Versus

The State of Bihar.

.... Respondent/s

with

Criminal Appeal (SJ) No. 85 of 1999

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1. Babu Lal Paswan, Son of Late Darogi Paswan.

2. Sri Ram Paswan, Son of Late Darogi Paswan. Both resident of Village-Andharwari, Police Station-Rajauli, District-Nawada.

.... Appellant/s

Versus

The State of Bihar.

.... Respondent/s

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Appearance :

(In CR. APP (SJ) No. 77 of 1999)

For the Appellant/s : Sri Krishna Pd. Singh, Sr. Adv.
Mrs. Meena Singh, Adv.

For the Respondent/s : Mr. R. B. Roy "Raman" APP

(In CR. APP (SJ) No. 85 of 1999)

For the Appellant/s : Sri Krishna Pd. Singh, Sr. Adv.
Mrs. Meena Singh, Adv.

For the Respondent/s : Dr. Indiwar Kumari, APP.

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

ORAL JUDGMENT

Date: 22-01-2014

Anjana Prakash, J.

01. On the last occasion the matters were listed for further hearing even without the Lower Court Records with a direction to the Counsel for the



Appellants to produce a copy of the deposition which he has done and, hence, the Court is proceeding to hear the matter.

02. It has been submitted on behalf of the Appellants that Appellant No. 3 Prasadi Paswan of Cr. Appeal (SJ) No. 77 of 1999 expired on 22.02.2007 and, therefore, his appeal has become infructuous. His Appeal is dismissed as such.

03. The Appellants No. 1 and 2 of Cr. Appeal (SJ) No. 77 of 1999 have been convicted under Section 304 IPC and sentenced to RI for eight years whereas the Appellants of Cr. Appeal (SJ) No. 85 of 1999 have been convicted under Section 304(i) IPC and sentenced to RI for six years by the 1st Additional District and Sessions Judge, Nawada in S.Tr. No. 374 of 1994/40 of 1994 by judgment dated 22.03.1999.

04. The case of the Informant, Rabindra Paswan is that on 24.07.1994 at about 10 A.M. he saw the accused persons variously armed assaulting Lachho Paswan. At the same time his father Bundi Paswan heard some shouts and seeing the occurrence he went to rescue Lachho Paswan at which Appellants, Anirudh Paswan and Awadh Paswan inflicted injuries with "Khanti" on his head as a result of which he fell down, injured and later succumbed to the injuries in the



hospital. The Appellants after having been charge-sheeted were put on trial under Section 302/144 IPC but acquitted of the charges and sentenced as mentioned above.

05. During trial the prosecution examined seven witnesses.

06. P.W. 1, Indradeo Singh is an eye-witness who stated that the Appellants were litigating with Lachho Paswan at which the deceased, Bundi Paswan came there and attempted to intervene. He was then assaulted by Awadh Paswan and Anirudh Paswan with "Khanti" on account of which he fell down injured and was taken to the hospital where he died. He stated that he did not see the brother and father of Anirudh Paswan in an injured condition nor his sister injured. He also stated that a group had gathered at the place where the altercation was going on and everyone was trying to pacify the matter. He denied that Bundi Paswan had instituted any case against him.

07. P.W. 2, Lachho Paswan the injured stated that he was being assaulted by the accused persons his brother and nephew came there at which the brother was assaulted on account of which he later on died. In Paragraph 4 he admits that the parties are agnates and there were some cases pending between them. As also in



paragraph 5 he has stated that Appellant, Anirudh Paswan had filed a counter-case with regard to the same occurrence. He stated that the witnesses came after the assault had taken place. It was suggested to him that he had not given any statement earlier and fact of the matter was that there was some scuffling in which the deceased had fallen down and died and that he was also never treated for his injuries.

08. P.W. 3, Informant, Rabindra Paswan has supported his version given in the First Information Report. He denies that there was earlier any case against them. However, there is an admission that there was some dispute over land between the parties who are all agnates. He stated that he had gone place of occurrence after his father had fallen down. He also admits that the Appellants had also filed a case about the occurrence in which he was an accused.

09. P.W. 4, Ambika Paswan has supported the case as an eye-witness. He also stated that there were three injuries on Lachho Paswan and had seen the deceased fallen on the road. He also conceded his father had given evidence in favour of Bundi Paswan the deceased and there was some dispute over land.

10. P.W. 5, Prabhu Paswan is the son of Lachho Paswan. He was never examined during investigation

and, therefore, his evidence is valueless.

11. P.W. 6, Dr. Rajeshwar Prasad conducted the post-mortem on the deceased on 24.07.1994 and found two injuries on his person caused by hard and blunt substance caused by "Khanti". On the same day he also examined Rabindra Paswan the Informant and found three simple injuries on his person.

12. P.W. 7, Ramdayal Singh the Investigating Officer has stated that there was a counter-case with regard to the same occurrence in which the prosecution party were charge-sheeted.

13. D.W. 1, Jamuna Prasad Sharma has proved the First Information Report of the counter-case whereas D.W. 2, Dr. Suniti Kumar had examined the injuries of Anirudh Paswan and found five injuries on his person. He had also examined Anita Devi, the daughter of Appellant, Prasadi Paswan and sister of Appellants No. 1 and 2 of Cr. Appeal (SJ) No. 77 of 1999 and found three injuries on their person. He had also examined Prasadi Paswan and found five injuries on his person.

14. D.W. 3, Arjun Prasad has stated that he had seen the parties altercating with each other in which the deceased had fallen on a bolder.

15. In the present case undoubtedly there was a counter-version of the occurrence which the prosecution



has not explained.

16. On account of such non-explanation by the prosecution, it would be difficult to accept that the prosecution has brought the real story before this Court and, hence, in my opinion it would be highly unsafe to rely on the sole testimony of interested witnesses.

17. For the aforesaid reasons, the appeals are allowed and the order of conviction and sentence passed against the Appellants on 22.03.1999 by the Additional Sessions Judge-I, Nawadah in S.Tr. No. 374 of 94/40 of 1994 is set aside. The Appellants are discharged of the liability of their bail bonds.

18. The Appeals stand allowed.

(Anjana Prakash, J)

**Patna High Court, Patna
Dated, the 22nd January, 2014
NAFR/Vikash/-/-**

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